**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL WRIT PETITION NO.994 OF 2006**

Bhanulal C. Sanghavi and others ...Petitioners

vs.

The State of Maharashtra and Anr. ...Respondents

Mr.Rajendra Sorankar for the Petitioners
Mr.Birendra Saraf with Mr.Yogesh Adhla for Respondent No.2
Mr.Y.M.Nakhwa A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : OCTOBER 7,2006.**

**P.C.:**

1. The Advocate for the Petitioners on instructions states that he is withdrawing the Petition unconditionally so far as Petitioner nos.3 and 4 are concerned.

2. The first submission of the Advocate for the Petitioner Nos.1 and 2 is that the Petitioner Nos.1 and 2 were not the Directors when the offence has been allegedly committed as they had resigned and Form No.32 was filed. The second submission is that in the order issuing process the names of the Petitioners are not specifically mentioned. The third submission is that there are no averments in the Application for bringing the Application within the purview of section 141 of the said Act of 1881.

3. So far as the first submission is concerned, whether the Petitioners had resigned before the date of offence or not is a matter of evidence. This submission constitutes defence of

the Petitioners to the complaint. So far as the second submission is concerned, the learned Counsel for the Petitioners invited my attention to the order issuing process. It is obvious that after application of mind the learned Magistrate has issued process and there is no order passed under section 203 of the Code of Criminal Procedure, 1973 as regards any accused person. It is well settled that hypertechnical approach cannot be adopted while dealing with quashing of complaint under section 138 of Negotiable Instruments Act, 1881. So far as the third submission is concerned, the following averment in the paragraph 1 of the complaint,

> "1...The complaint is filed through its Chief Manager Mr.D.R.Chodankar, Accused No.1 is a company and Accused No.2 is Managing Director of 3 and 4 are Directors thereof and at the time the offence was committed were in charge and responsible to the company i.e. Accused No.1 for the day to day conduct of its business.

is sufficient to satisfy the test laid down by the Apex Court in case of S.M.S. Pharmaceuticals Vs. Neeta Bhalla and another [2005 (4) Mh.L.J. page 731]. I find that the Revisional Court was right in confirming the order passed by the Trial Court of issuing process.

5. It is also to be noted here that plea of the accused

persons has been recorded. There is no merit in the Petition.

Petition is rejected.

6. It is made clear that nothing mentioned in this order shall be construed as expression of any opinion on the merits of the complaint and the complaint shall be decided on its own merits.

7. At this stage, the learned Advocate for the Petitioners states that the Petitioner Nos.1 and 2 are aged persons and they may be granted exemption from personal appearance. Shri Saraf appearing for the second Respondent has no objection.

8. Hence, it is directed that if the Petitioner Nos.1 and 2 apply to the Trial Court for grant of exemption, the Trial Court will grant the exemption subject to condition of their presence on a particular date when it is absolutely necessary.

**JUDGE**